उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 295 सन् 2004

(13)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: Jageshar @ Timoriha, S/o Ramsunder, aged 29 years, Occupation Labour, R/o village Batra, P.S. Jainagar.

-Versus-

RESPONDENT: State of Chhattisgarh, through Police Station Jainagar.

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

6-7-2007:-

Shri D.R. Sharma, Sr. Advocate with Shri Anand Pandey, Advocate for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 8-11-2001 passed by the 6th Additional Sessions Judge, Surajpur, in S.T. No.65/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing murder of his wife namely, Chameli, sentenced him to undergo imprisonment for life.

The case of the prosecution is that on 28-9-99 at about 11.30 p.m. PW-1 Viphal Ram lodged a report in the police chowky Karji, Police

(14)

मामला क्रमांक ..... सन् 200

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Station Jainagar to the effect that in between 8.30 p.m. to 9 p.m. when he was taking his meal, accused Jageshar came to his house and informed that he has committed murder of his wife by attacking with axe. When he enquired from Jageshar as to why he had attacked her, he disclosed that she wanted to leave his house whereas, he wanted to keep her, on that point some altercation took place and he attacked her with axe, on which he called Somarsai, Loro @ Rambudhi, Ramsunder and Sukhan and he made extra judicial confession before them. Based on that, FIR Ex.-P/2 was registered. Merg intimation Ex.-P/14 was given. The Investigating Officer left for scene of occurrence and prepared inquest Ex.-P/10 on the body of the deceased. He prepared site plan of the place of occurrence under Ex.-P/11. One axe, one bucket, broken bangles of the deceased, plain soil and blood stained soil were seized from the place of occurrence under Ex.-P/5. White dhoti and T-shirt were seized from the accused under Ex.-P/4. The dead body of the deceased was sent for postmortem examination to the Primary Health Centre, Bishrampur where PW-11 Dr. Ashutosh Gupta conducted postmortem, prepared postmortem report Ex.-P/16-A and opined that cause of death was haemorrhagic shock and head injury. Death was homicidal in nature.

After completion of the investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Surajpur, who in turn committed the case to the Sessions Judge, Ambikapur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against

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him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant argued that in this case virtually there is no evidence to connect the accused with the crime in question. The case of the prosecution is that the accused made extra judicial confession before PW-1 Viphal Ram, PW-2 Somarsai, PW-3 Kisun and PW-4 Budhi. All these witnesses have turned hostile and they have not supported the prosecution case. He further argued that learned trial Court has convicted the accused on the ground that body of the deceased was found in the house of the accused and the matter was not reported by the accused whereas, there is not an iota of evidence on record to establish that the accused was seen in the house. Offence was committed during the day and there is no other circumstantial evidence to connect the accused with the crime in question.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence. It is true that PW-1 Viphal Ram, PW-2 Somarsai, PW-3 Kisun and PW-4 Budhi have turned hostile and they have not supported the prosecution case. Even they have not supported the prosecution case that accused made extra judicial confession before them regarding committing murder of his wife. Now, only question remains that body was

(16)

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Barve	found in the house of the accused and he did not report the matter to the police? But there is no evidence to show that during the day the accused was seen in the house where dead body of the deceased was found or he was seen nearby the house. As far as question that the accused has not reported the matter is concerned, in the first instance, the prosecution was required to bring some evidence on record that establishes that it was within the knowledge of the accused that his wife has been murdered in the house. But there is nothing on record to establish that fact. Even though as per FSL report, on Dhoti, Baniyan and T-shirt (G-1, G-2 & G-3) blood was found. But there is no serologist's report that blood was human blood that too of the blood group of the deceased. Therefore, merely on the basis of FSL report the accused cannot be connected with the crime in question. There is no other evidence to connect the accused with the crime in question. Therefore, we are of the considered opinion that conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. cannot be sustained and same is liable to be set aside. In the result, the appeal is allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside. He is acquitted of the said charge. The accused/appellant is stated to be in detention since 29-9-99, therefore, it is directed that he should be released forthwith, if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Sd/- 19/9/07